

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Advanced Television Systems)
and Their Impact upon the)
Broadcast Service)

MM Docket No. 87-268

FCC 97-115; 97-116

To: The Commission)

PETITION FOR RECONSIDERATION
OF THE FIFTH AND SIXTH REPORTS AND ORDERS

UNIVISION COMMUNICATIONS INC.

Clifford M. Harrington
Scott R. Flick
C. Brooke Temple III

Its Attorneys

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

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SUMMARY

The rules and procedures adopted by the Commission in its Fifth and Sixth Reports and Orders to implement digital television will severely impact Spanish-language broadcasters, including Univision Communications Inc. (“Univision”). The Commission’s disproportionate allotment of adjacent DTV channels to UHF stations, displacement of Spanish-language LPTV stations, mistaken assumptions regarding standards for transmitter power and receivers, and severe limitation of opportunities for maximization of UHF facilities, will greatly diminish the ability of Spanish-language broadcasters to serve their Hispanic audiences. If these problems are not remedied, digital television may mark the first diminution in the availability of Spanish-language programming at a time when the U.S. Hispanic population is growing rapidly.

To prevent this from happening, Univision herein requests a number of minor, but vitally important, changes to the Commission’s digital television rules, procedures, and Table of Allotments. Univision applauds the Commission’s efforts in moving this nation into the digital age, and trusts that the Commission will now perform the fine tuning of that process necessary to ensure that Hispanic viewers are not left behind in the digital transition.

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Univision Communications Inc. ("Univision"), by its attorneys, hereby petitions for reconsideration of the Commission's Fifth Report and Order^{1/} and Sixth Report and Order^{2/} in the above-referenced proceeding.^{3/} As shown below, certain rules and procedures adopted for the allotment of channels to digital television ("DTV") will have a disproportionate impact on UHF broadcasters such as Univision. If left unaltered, these rules and procedures will relegate Univision's minority audience to receiving inferior DTV service.

^{1/} Fifth Report and Order, Advanced Television Systems and Their Impact on Existing Television Service, MM Docket No. 87-368, 62 Fed. Reg. 26,966 (May 16, 1997) ("Fifth Report").

^{2/} Sixth Report and Order, Advanced Television Systems and Their Impact on Existing Television Service, MM Docket No. 87-368, 62 Fed. Reg. 26,684 (May 14, 1997) ("Sixth Report").

^{3/} Univision herein consolidates its petitions for reconsideration of the Fifth and Sixth Reports, as both were issued in the above-referenced Docket and address the adoption of rules to implement digital television. Pursuant to 47 C.F.R. § 1.429(e), Univision is not serving this petition upon other parties to this proceeding. Should the Commission determine, however, that 47 C.F.R. § 1.420(f) is applicable to this proceeding, Univision hereby requests a waiver of the service requirement, as service upon the hundreds of parties to this proceeding would be unduly burdensome.

I. INTRODUCTION

1. Univision owns and operates the Univision Network, which has 41 television affiliates nationwide -- 20 being full-power television stations, and 21 being low-power television stations. Of these, Univision owns and operates twelve full-power and seven low-power Spanish-language television stations.^{4/} All operate in the UHF band.

2. The Univision Network is the primary source of news and entertainment for this nation's 30,000,000 Hispanics. The twenty most widely watched programs in Hispanic households are aired exclusively on the Univision Network. The Univision Network reaches more than 92% of all Hispanic homes and had a 79% share of the U.S. Spanish-language network audience in 1996. It is the fifth largest full-time network, delivering larger audiences than all broadcast and cable networks except ABC, CBS, NBC, and Fox.

3. Univision's audience is expanding rapidly, as Hispanics are the fastest growing segment of the U.S. population. According to current census projections, the U.S. Hispanic population is expected to increase 52% by the end of the next decade, and by 258% by the year 2050.^{5/} By

^{4/} Univision's full-power stations include KLUZ-TV, Albuquerque, NM; KUVN(TV), Garland, TX; KFTV(TV), Hanford, CA; WGBO-TV, Joliet, IL; KMEX-TV, Los Angeles, CA; KUVS(TV), Modesto, CA; WLTV(TV), Miami, FL; WXTV(TV), Paterson, NJ; KTVW-TV, Phoenix, AZ; KXLN-TV, Rosenberg, TX; KWEX-TV, San Antonio, TX; and KDTV(TV), San Francisco, CA. Univision's LPTV stations include K48AM, Albuquerque, NM; K30CE, Austin, TX; KABE-LP, Bakersfield, CA; KUVN-LP, Fort Worth, TX; W47AD, Hartford, CT; WXTV-LP, Philadelphia, PA; and K52AO, Tucson, AZ.

^{5/} Statistical Abstract of the United States: 1996 (116th ed.), U.S. Bureau of the Census, p. 19.

2050, the U.S. Hispanic population is expected to make up 24.5% of the overall population, up from its current 10.2 % share today.^{6/}

4. Over seventy percent of Hispanics prefer to speak Spanish in their homes. Univision is the dominant source of news, entertainment, and educational programming for the nation's Spanish-speaking population, and studies conducted by Nielsen Media Research show that more bilingual Hispanics watch Univision than any other Spanish or English-language network. Many Hispanics desire to preserve their unique and important heritage, and the common language upon which it is based. By building and maintaining their Spanish language skills, Hispanics aspire to maintain their cultural identity. Thus, it is important to Hispanic families that they have Spanish-language programming readily available to the entire family. The Univision Network also provides Hispanic viewers access to local news and informational programming relevant to the Hispanic community.

5. Given the explosive growth of the Hispanic populace, and its desire for and reliance on Spanish-language programming, it is essential that the needs of this segment of society be considered in the transition to digital television. If an English-language station's service area is reduced or eliminated in the DTV transition, its viewers still receive a half-dozen or more stations providing similar English-language service. If a Spanish-language station's service area is reduced or eliminated, its disenfranchised audience will most likely have no alternative Spanish-language channel available. In ten markets in the United States, Univision Network affiliates provide the only full-power, free, over-the-air broadcast service in Spanish. As a result,

^{6/} The Tampa Tribune, Hispanic Population on the Rise, March 15, 1996 (citing Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995-2050, U.S. Bureau of the Census (1996)); Los Angeles Times, Latinos, Asians to Lead Rise in U.S. Population, March 14, 1996 (citing same report from U.S. Bureau of the Census).

the elimination or diminution of these stations' service would leave many viewers without access to any Spanish-language programming or culturally-relevant news and information programming. Given the importance of Spanish-language programming to Hispanics in the United States, Univision herein requests that the Commission carefully review its actions to ensure that the results of those actions do not impede or hinder the ability of Univision to serve the Hispanic community.

6. For the reasons set forth below, Univision believes that the Commission's Table of Allotments fails to consider important facts, with the result that Univision's ability to continue to serve its current audience will be drastically impaired in the digital environment. Further, Univision is concerned that the Table effectively locks Univision into facilities that will be permanently inferior to VHF competitors. This will not only limit Univision's ability to serve its current audience, but will create harmful economic repercussions that threaten the future growth of that service to meet the needs of the growing Hispanic population.

7. Exacerbating the problem is the fact that Univision, like many minority-oriented broadcasters, must rely on LPTV stations to deliver its programming in many markets. For example, Univision can currently reach Hispanic viewers in Philadelphia, Washington, San Diego, and Fort Worth only through LPTV stations. Overall, Univision provides Spanish-language programming through LPTV stations in sixteen markets where no full power Spanish-language television broadcast stations exist. The failure of the Commission to adequately explain and develop its plans for protecting LPTV stations, and for finding new channels for displaced LPTV facilities, places a key segment of Univision's viewing audience at risk of losing service. Collectively, LPTV stations affiliated with Univision provide service to markets with approximately 3.4 million Hispanics representing 11.4% of all U.S. Hispanics. As detailed

herein, Univision requests that the Commission make several discrete adjustments to the DTV Table of Allotments that will protect this service without any adverse impact on full-power television broadcasters. The Commission must do all that it can to protect this vital, and, in many communities, unique programming service.

II. THE COMMISSION'S DTV RULES AND TABLE OF ALLOTMENTS DISPROPORTIONATELY IMPACT UHF STATIONS AND, AS A RESULT, PARTICULARLY HARM MINORITY-ORIENTED BROADCASTERS SUCH AS UNIVISION

8. Because broadcasters catering to minority audiences are a relatively recent development in most television markets, such broadcasters have typically had to access that audience through any means available. With most of the VHF station allotments in major markets -- the areas with large minority populations -- already being utilized by large entities affiliated with the major networks, minority-oriented broadcasters have had to rely on UHF and LPTV stations in order to reach their minority audiences. Construction and operation costs associated with full-power UHF stations are extremely high, and such stations provide limited coverage compared to their VHF competitors. As discussed below, the Commission's DTV rules and Table of Allotments cause particular harm to UHF and LPTV stations, and if left unaltered, will have a particularly severe impact upon broadcasters serving minority audiences.

9. As the premier Spanish-language broadcasting network, Univision continually searches for ways to better serve the rapidly growing Hispanic population. During the rulemaking to adopt the DTV Table of Allotments, Univision looked forward to the opportunity to provide a new service to its audience. The rules as adopted, however, will require minority-oriented UHF broadcasters like Univision to possibly reduce their service in the transition to DTV. By allotting DTV channels adjacent to co-owned NTSC channels, the Commission has unintentionally locked many minority-oriented UHF broadcasters into inferior co-located DTV transmitter sites.

Similarly, a disproportionate number of minority-oriented licensees like Univision have been allotted DTV channels in the area of spectrum that will eventually be recovered by the Commission, requiring them to build their DTV facilities twice in order to ultimately be located within the core spectrum chosen by the Commission. This will place an unnecessary financial strain on the stations that are typically least able to afford it. These unduly burdensome allotments threaten the future health and growth of diverse minority programming, which should be given the greatest protection possible in the DTV proceeding.

A. BY ALLOTING TO UNIVISION DTV CHANNELS THAT ARE ADJACENT TO ITS NTSC CHANNELS, THE COMMISSION HAS UNINTENTIONALLY JEOPARDIZED THE AVAILABILITY OF HISPANIC PROGRAMMING IN THE DALLAS-FORT WORTH AND NEW YORK TELEVISION MARKETS

10. In many cases, existing UHF stations were allocated DTV channels immediately adjacent to their existing NTSC channels. It appears from the Commission's Table of Allotments that this may have been a conscious decision on the part of the persons preparing the computer algorithm used to prepare the Table, or by the engineers implementing the allotment program. While VHF stations were rarely given an adjacent DTV channel, ten of Univision's twelve UHF stations received adjacent allotments.^{2/} By allotting a disproportionately high number of adjacent DTV channels to UHF broadcasters like Univision, the Commission placed on these licensees the additional burden of having to co-locate their NTSC and DTV operations in order to minimize harmful interference between the two. For Univision, this additional burden

^{2/} The only exceptions were WGBO-TV, Chicago, and KDTV, San Francisco. In Chicago, an adjacent allotment could not be made because WGBO-TV operates on Channel 66, and an adjacent allotment would have been in the portion of the band reserved for early auction. In contrast to Univision, which has ten of its twelve DTV allotments on channels adjacent to its NTSC channels, only four out of the 41 DTV allotments held by ABC, CBS, and NBC are on channels adjacent to their NTSC operations.

has severe consequences in at least two major Hispanic markets -- the Dallas-Fort Worth market and the New York market.

11. Univision agrees that if a DTV channel **must** be allotted immediately adjacent to an NTSC channel, in no instance should the DTV channel be allotted to anyone other than the adjacent NTSC licensee. However, where allocation of an adjacent channel artificially and needlessly limits a broadcaster's service to its market, it is certainly preferable to assign a non-adjacent DTV channel. The failure of the Table of Allotments to take such factors into account has led to sub-optimal DTV allocations that should be corrected on reconsideration. The Commission must review situations where co-location would be difficult or impossible to achieve, and provide a non-adjacent DTV channel to stations facing this difficulty. Given that the Table of Allotments will govern broadcasting for decades to come, the desire of the Commission for speedy action clearly should not be permitted to overcome the need for optimizing DTV service to the public.

1. THE COMMISSION'S TABLE OF ALLOTMENTS WILL DEPRIVE MANY HISPANIC RESIDENTS IN THE DALLAS-FORT WORTH MARKET OF EXISTING SERVICE AND WILL DEPRIVE UNIVISION OF COMPETITIVE EQUALITY

12. Univision operates UHF station KUVN, Garland (Dallas), Texas on Channel 23 to provide local news, information, public affairs and entertainment programming in Spanish to the residents of the Dallas-Fort Worth market. The Commission allocated adjacent Channel 24 for KUVN's DTV operations. In this market, nearly every television station operates from the Cedar Hill antenna farm, which is located between Dallas and Fort Worth. KUVN, however, is constrained by mileage separation requirements and must transmit from a tower 43.5 kilometers northeast of Cedar Hill. As a result, KUVN's signal covers significantly less of the Dallas-Fort Worth market than the television stations operating from Cedar Hill. Indeed, KUVN has so little

signal coverage of Fort Worth that Univision has been able to compete in the market only through its tandem operation of low power television station KUVN-LP, Fort Worth. Even with KUVN-LP, however, KUVN still falls short of serving the entire Dallas-Fort Worth market when compared to all of the other stations in the market against which Univision must compete.

13. Had KUVN been allotted a non-adjacent DTV channel that could operate from the Cedar Hill site, the Table of Allotments could have ensured that KUVN's DTV programming would reach most of the Hispanic households in the Dallas-Fort Worth market. However, by requiring Univision to co-locate its NTSC and DTV operations (because of the channel adjacency), the Table aggravates the existing coverage problem Univision suffers in this key Hispanic market.

14. While DTV Channel 24 would create no interference to other stations operating from Cedar Hill, it cannot in practice operate from that location. As an adjacent channel, it must operate near, and preferably at the same exact location as, the existing KUVN transmitter. Thus, Channel 24 will remain trapped northeast of Dallas, unable to provide a viewable signal to much of the Fort Worth area -- an area with approximately 250,000 Hispanic viewers.

15. Worsening the situation, the Commission has allotted the channel presently used for the operation of KUVN-LP, Channel 31, for DTV use by a full-power station in the Dallas area. Given the dearth of channels available in the market, it is likely that KUVN-LP will be unable to displace to another channel. It will therefore be forced off the air, meaning that Univision will be unable to serve Hispanic viewers in Fort Worth with either an NTSC or a DTV signal.

16. Accordingly, Univision requests that the Commission assign KUVN a non-adjacent DTV channel that will allow Univision to locate KUVN's DTV transmitter at the Dallas-Fort

Worth antenna farm at Cedar Hill.^{8/} Because the Commission has not yet released the technical data necessary for Univision to determine the availability of DTV channels itself, Univision requests that the Commission use its DTV engineering software to locate and allot such a channel to KUVN. In addition, to preserve existing NTSC Spanish-language service to the Hispanic residents of the Fort Worth area, Univision requests that the Commission take action to preserve KUVN-LP's existing channel, or provide an alternate channel upon which it may operate until NTSC operations end in the United States. Without these reasonable steps, hundreds of thousands of Hispanic viewers in the Dallas-Fort Worth area will be deprived of vital NTSC and DTV Spanish-language program service.

2. BECAUSE OF THE LIMITED AVAILABILITY OF ANTENNA SPACE IN THE NEW YORK MARKET, THE ALLOCATION OF AN ADJACENT CHANNEL TO WXTV, PATERSON, NEW JERSEY, WILL SIGNIFICANTLY HARM UNIVISION'S SERVICE IN THE NEW YORK MARKET

17. Univision operates UHF station WXTV, Channel 41, Paterson, New Jersey, which serves the New York television market. It broadcasts from the Empire State Building in mid-town Manhattan. As the Commission is aware, suitable television antenna space in Manhattan is severely limited. It is effectively restricted to the Empire State Building and the World Trade Center, and available slots on these buildings are few. Despite this serious problem, the Commission expects that New York will be among the first markets to provide DTV transmissions.

18. The Commission's assignment of an adjacent channel -- DTV Channel 40 -- to WXTV exacerbates the problem that Univision will have in commencing DTV service to the Hispanic

^{8/} In locating an available channel, the Commission should be aware that its TV Engineering and Directional Antenna databases incorrectly indicate that KUVN's current antenna main lobe azimuth is 0°. The correct azimuth bearing, as indicated in KUVN's license, is 260°.

community in the New York market. As noted above, WXTV operates from the Empire State Building. It is not clear that space will be available for an additional UHF antenna, or a UHF transmitter, atop the Empire State Building. The only other real alternative, the World Trade Center, is 4.7 kilometers from the Empire State Building. It is likely that it will be impossible to operate on NTSC Channel 41 from the Empire State Building without receiving destructive interference from DTV Channel 40 on the World Trade Center.

19. Given the unique importance of the New York market to any broadcaster, and the present lack of engineering data available on interference that might be caused by full power adjacent channel broadcast operations from sites nearly five kilometers apart, the Commission should eliminate this likely source of interference by providing WXTV with a non-adjacent DTV channel. While Univision will still face the difficulty of locating space to construct DTV transmitter facilities, this is a far more manageable problem than having to risk tens of millions of dollars in equipment, and far larger sums in viewer loyalty and goodwill, on the unproven hope that interference will not occur between adjacent channel NTSC and DTV facilities located nearly five kilometers apart. Univision therefore requests that the Commission allot a non-adjacent DTV channel to WXTV in order to protect the availability of Univision's Spanish-language program service to the residents of the New York Market.

B. IN ORDER TO AVOID VIEWER CONFUSION AND UNNECESSARY EXPENSE, THE COMMISSION SHOULD ADJUST THE TABLE OF ALLOTMENTS TO PROVIDE A DTV CHANNEL WITHIN THE CORE SPECTRUM FOR WGBO-TV, CHANNEL 66, JOLIET (CHICAGO), ILLINOIS

20. Univision operates UHF station WGBO-TV, Joliet, Illinois, on Channel 66 to provide local news, information, public affairs, and entertainment programming in Spanish to the residents of the Chicago market. The Commission has allocated DTV Channel 53 to WGBO-TV. When NTSC operations are concluded in approximately 2006, Univision will have to vacate

Channel 53, as the Commission has indicated that it falls outside the “core spectrum” under any of the spectrum plans now being considered. Because WGBO-TV’s current NTSC channel (66) is also outside of the Commission’s proposed core spectrum, WGBO-TV will not only have to build its DTV facilities twice, but will also have to move to some presently unknown channel elsewhere in the band. This is economically a most undesirable result, and will surely confuse Univision’s viewers, particularly if WGBO-TV’s DTV operations are moved to a channel previously occupied by another station. The fact that this expense and uncertainty is being thrust upon a station that is the major source of local news, educational, and informational programming for the Hispanic community is particularly unfortunate.

21. Because broadcasters will ultimately be allowed to retain either their existing channel or their new channel for permanent DTV operations, it is important that stations have at least one of their channels --either NTSC or DTV-- in the core spectrum. This approach minimizes viewer confusion and the need for double moves by broadcasters. With specific regard to WGBO-TV, which currently operates on Channel 66 and has been assigned DTV Channel 53, a simple swap of channels in the Table of Allotments will resolve the problem without adverse impact upon any party. Univision notes that WGN-TV, which shares WGBO-TV’s transmitter site, operates on NTSC Channel 9 and was allocated DTV Channel 19. Since WGN-TV’s NTSC channel is already within the core spectrum, swapping WGN-TV’s and WGBO-TV’s DTV channels will ensure that both stations have a channel within the core spectrum on which to locate their DTV operations once NTSC operation conclude. This will allow WGBO-TV to avoid the expense and confusion of a double move of its DTV facilities while taking advantage of the fact that WGN-TV can (and presumably will want to) move its DTV operations to its well-established VHF

Channel 9 at the conclusion of NTSC operations. Univision therefore requests that the Commission adjust its table of allotments accordingly.

C. THE COMMISSION MUST REQUIRE THAT UHF DTV RECEIVERS HAVE A 7 dB OR BETTER NOISE FIGURE, AND UHF STATIONS SHOULD BE AUTHORIZED TO TRANSMIT WITH SUFFICIENT POWER TO TRULY REPLICATE THEIR EXISTING LEVEL OF SERVICE

22. By premising its DTV allocation table on the unrealistic notion that the average viewer will utilize an outdoor rooftop antenna and a UHF receiver with a 7dB or better noise figure, the Commission has overestimated the coverage that DTV stations in the UHF spectrum will be able to provide. Moreover, because stations now providing NTSC service in the UHF band ("UHF/UHF") have been allotted much lower power levels than stations transitioning from the VHF band to the UHF band for DTV ("VHF/UHF"), these overly-optimistic assumptions will severely hamper the efforts of UHF licensees, such as Univision, to serve their existing audience, much less achieve parity with other stations in their market.

23. The advent of cable television, along with restrictive covenants that until recently prohibited the use of outdoor antennae in many neighborhoods, have made the rooftop antenna a rarity. Similarly, the proliferation of multiple television sets in American homes has made it impractical to run wiring throughout a house to connect all of the television sets to a single rooftop antenna. As a result, even if a home does have a rooftop antenna, the antenna is likely connected to only one of several television sets in the house, with the rest using the indoor antenna included with the set. Finally, an increasing number of individuals live in multiple unit dwellings, where an outdoor antenna is not possible. These individuals must therefore contend not only with the limited capabilities of an indoor antenna, but with the many urban obstacles blocking line-of-sight reception and the increased level of ambient electronic interference from neighbors' appliances.

24. A significant portion of Univision's Spanish-language audience resides in urban areas where multiple dwelling units are the most common type of residence and indoor antennae are the norm. For many such urban dwellers, an outdoor antenna may not be physically possible, or the cost may be prohibitive. Complicating the issue is the fact that few homeowners, Hispanic or otherwise, are likely to be technically proficient enough to know that they will need a DTV receiver with a low noise figure in order to receive DTV programming equivalent to that which they currently receive from NTSC stations. At a time when the Commission is touting the importance of providing all Americans with equal access to telecommunications services, it would be particularly inappropriate to limit full access to the broadcast stations in a market to only those technically adept individuals with the knowledge, time, and economic resources to locate and acquire a receiver with a 7 dB noise figure.

25. To ensure that the Commission's assumption that UHF receivers will have 7 dB noise figures is not erroneous, the Commission must mandate that DTV receivers are built to conform with that noise figure. This will allow consumers to maintain their current level of broadcast service, even with the modest UHF power levels proposed by the Commission. As recognized by the Commission in its Fifth Report, the Commission has the authority to issue such a requirement. Fifth Report at ¶ 107 (citing the All Channel Receiver Act, 47 C.F.R. § 303(s)). Otherwise, it is unlikely (and therefore wrong for the Commission to assume) that DTV receivers will have a 7 dB noise figure, and that the UHF power levels specified in the Table of Allotments are sufficient.

26. For Univision, it is critical that the DTV signals of its stations and those of its affiliates reach not just the rooftops of its audience, but that they arrive with sufficient signal strength to penetrate the structure, deliver a clear signal to indoor antennae, and result in a clear, viewable

signal for the recipient. This is even more critical with DTV than it is with NTSC. A weak NTSC signal is still viewable and indicates to the viewer that a clearer picture may be obtained with an antenna adjustment or a better antenna. Because of the “cliff effect” of DTV, however, a weak DTV signal provides no picture at all, and potential viewers will therefore be unaware that the station is even available to them through a better (or better adjusted) antenna. Given the multitude of new channels that the DTV transition will bring to viewers, as well as the relocation of stations during the eventual repacking of the spectrum, it will be easy for a weak DTV signal to get lost in the shuffle -- particularly if its reception requires a precise orientation of the indoor antenna that is at odds with the reception of other stations.

27. Providing a viewable signal in many Hispanic homes will be particularly difficult because a substantial portion of Univision’s viewing audience will continue to utilize NTSC television sets even after the conversion to DTV is complete, using converter boxes to switch from digital to analog modulation. It is a fairly safe bet that these converters, operated in conjunction with existing inexpensive NTSC receivers, will not be as sensitive or as noise free as the Commission is presuming. It is therefore imperative that the Commission authorize sufficient power levels for UHF/UHF stations to ensure that they are able to serve their current audiences.

28. In short, replication of a UHF station’s NTSC coverage on a UHF DTV channel requires more than just getting a signal to the rooftops. It requires the transmitter power to reach into those homes and drive inexpensive receivers and converters. Stated most precisely, the goal of

the DTV transition is not so much the replication of signal contours, but the replication of **service.**^{2/}

29. The problems caused by the inability of a UHF/UHF station to reach all or nearly all of the viewers within its service contour are aggravated by the Commission's proposal to authorize VHF/UHF DTV stations to operate with up to one megawatt of power in an effort to replicate their extensive NTSC service contour. While these power levels will allow VHF/UHF stations to reach over the radio horizon through the sheer brute force of transmitter power, they will also allow such stations to deliver an intensely powerful signal closer to the transmitter. The high signal strength of VHF/UHF DTV stations will allow far greater penetration of physical obstructions than that of UHF/UHF DTV stations within their respective service contours. More importantly, the disparity in signal strength will allow easy reception of VHF/UHF DTV stations on indoor and low gain antennae, while UHF/UHF DTV stations may not be receivable at all, even though the receiver is well within the UHF/UHF DTV station's service contour. The problem is not that a VHF/UHF station's service contour is larger than that of a UHF/UHF station. The problem is that a VHF/UHF station's level of service within its service contour will be much greater than the level of service a UHF/UHF station will be able to deliver within its own service contour. While Univision applauds the Commission's decision to limit stations to a maximum of one megawatt, this still leaves quite a disparity in power levels between VHF/UHF and UHF/UHF stations.

30. It is difficult, given the current lack of DTV interference and propagation data, to quantify the extent of the service disparity that will result from the DTV allotments. Univision

^{2/} In this regard, Univision supports the Petition for Reconsideration being filed today by Sinclair Broadcast Group, Inc.

and many other UHF stations are concerned that, in a real world scenario, they may be able to reach only 50% of potential viewers in their DTV Grade A contour, while VHF/UHF stations will have ready access to almost every viewer in their Grade A contour. UHF/UHF stations cannot afford to lose any potential viewers located within their already limited service contours.

31. The economic and competitive hardships on UHF/UHF stations caused by the signal strength disparity with VHF/UHF stations within a market will be intensified by the ongoing development of many new computing devices that utilize low gain indoor antennae to receive data embedded in DTV broadcasts. Many broadcasters are hoping that the revenues generated by this developing market will help fund the costly transition to DTV. However, given the small, indoor, low gain antennae that many of these technologies will use, UHF/UHF DTV stations will be unable to deliver a sufficiently reliable signal more than a few miles from their transmitter site. This will effectively exclude UHF/UHF stations from this developing market for data services, and information providers will be forced to compete for space on the strong signals of the VHF/UHF stations in the market. Worse, markets that have only UHF/UHF stations may be unable to utilize these new information technologies entirely. Univision therefore requests that the Commission require UHF DTV receivers to achieve a 7 dB or better noise figure and that UHF/UHF power levels in the Table of Allotments be adjusted upward to ensure that existing levels of service are maintained in the DTV world for all members of the community, and not just for those with a high-end receiver and an outdoor rooftop antenna.

D. UNDER THE GUISE OF “EFFECTIVE SPECTRUM MANAGEMENT,” THE COMMISSION HAS LARGELY ELIMINATED ANY OPPORTUNITY FOR UHF/UHF BROADCASTERS TO MAXIMIZE THEIR FACILITIES

32. In its Sixth Report, the Commission admits that its differing treatment of VHF/UHF broadcasters and UHF/UHF broadcasters “could lead to increased disparities among stations.”

Sixth Report at ¶ 29. As noted above, the Table of Allotments creates tremendous power disparities between VHF/UHF and UHF/UHF broadcasters. While the Commission has stated its goal of permitting licensees to maximize their facilities in the future to reduce this disparity, there is no guarantee that this will be possible. Indeed, the Table of Allotments is based on an extraordinarily detailed examination of the existing service areas of stations, and effectively **minimizes** the chances for future upgrades in service by packing stations as tightly as possible into the reduced spectrum available. This means that unless the Commission is willing to make additional spectrum available, the disparity created by the Table of Allotments will persist indefinitely. Moreover, the Commission has failed to issue the technical information that is critical to an examination of the alternative channel options and possibilities for facilities maximization available to UHF broadcasters. Univision therefore requests that the Commission provide clear pathways for UHF maximization and that it hold this proceeding open for further comments until after the release of OET Bulletin No. 69. This will allow UHF broadcasters to provide the Commission with constructive input on maximizing UHF facilities and optimizing the level of service available to the public under the Table of Allotments.

III. LPTV STATIONS THAT PROVIDE UNIQUE SERVICE, SUCH AS SPANISH-LANGUAGE BROADCASTING, SHOULD BE GIVEN GREATER PROTECTION AGAINST DISPLACEMENT

33. To date, the Commission has fallen short in its attempt to lessen the impact of the DTV allotment and spectrum recovery proposals on LPTV stations. As previously noted, Univision owns seven LPTV stations and is affiliated with numerous other LPTV stations which broadcast its unique Spanish-language programming to serve the growing Hispanic population in major

metropolitan markets.^{10/} In many of these markets, all of the full-power television stations are affiliated with English-language networks. The only option available to Univision for providing programming to underserved Hispanics in these markets is the use of LPTV stations. WXTV-LP, Philadelphia, Pennsylvania, which Univision owns, and WMDO-LP, Washington, D.C., which is an affiliate of Univision, are examples of large markets with sizable Hispanic populations that Univision has only been able to serve through LPTVs.^{11/} Even with the limited coverage inherent in LPTV signals, viewership of the Univision LPTV stations is substantial. For example, the LPTV station operated by Univision in Bakersfield, California, KABE-LP, ties as the most watched television station among 18-34 year olds in the entire Bakersfield DMA, and its local newscast is the top-rated newscast in the market among 18-49 year olds.^{12/}

34. The rules and procedures adopted by the Commission for the DTV transition will displace a large number of LPTV stations, especially in major markets. While LPTVs have been granted authority to operate throughout the DTV transition, and have been given the chance to apply for a displacement channel in the same area without being subjected to competing

^{10/} The other LPTV stations owned and operated by Univision include K52AO, Tucson, AZ; K48AM, Albuquerque, NM; K30CE, Austin, TX; KUVN-LP, Fort Worth, TX; and W47AD, Hartford, CT. The Univision Network delivers Spanish-language programming to many other markets through affiliation agreements with an additional fifteen LPTV stations that are not owned by Univision. These stations are: K07TA, Santa Maria, CA; K09UF, Morro Bay, CA; K19BN, San Diego, CA; KBNT-LP, La Jolla, CA; KSVN-LP, Ogden, UT; K66FN, Salt Lake City, UT; KCEC-LP, Pueblo, CO; K39DW, Daggett and Rural Areas, CA; K68FO, Reno, NV; KBZO-LP, Lubbock, TX; KVER-LP, Indio, CA; W46AR, Milwaukee, WI; WMDO-LP, Washington, D.C.; WVEN-LP, Orlando, FL; and WVEA-LP, Tampa, FL.

^{11/} Philadelphia has an Hispanic population of approximately 84,000 people, and the population of Washington, D.C. includes nearly 30,000 Hispanics. 1997 County and City Extra, 6th Edition (George E. Hall and Deirdre A. Gaquin, eds.).

^{12/} May 1996 Nielsen Station Index for the Bakersfield DMA.

applications, these attempts at mitigation are an empty offer. In major Hispanic markets where LPTV stations owned or affiliated with Univision operate, there will be little, if any, chance of DTV channels becoming available due to the extremely limited amount of spectrum. Further, many of the affiliate LPTV licensees do not have the resources needed to perform an exhaustive engineering search of potential DTV allotments in their affected markets.

35. At a minimum, the Commission should take all steps possible to ensure that Univision is able to preserve its LPTV stations operating in large markets, including Washington, D.C. (WMDO-LP), Philadelphia (WXTV-LP), and Hartford, Connecticut (W47AD), as well as those in smaller markets. If Univision is not afforded the chance to preserve these stations, a rapidly growing Hispanic audience will lose its primary broadcast voice, and the Univision stations and their affected audiences will never be able to move beyond “secondary status.”

36. Because the Commission has not yet released OET Bulletin No. 69, Univision has been unable to perform the complex analyses necessary to determine whether its LPTV stations and LPTV affiliates in crowded major markets can be engineered to survive the introduction of DTV. It is already clear, however, that in at least three markets, minor adjustments to the Table of Allotments will be necessary to allow continued Spanish-language programming service. With this in mind, Univision proposes the following revisions to the Table of Allotments. Based on the engineering software developed by the Association for Maximum Service Television, all of these changes are possible without adversely affecting any station’s DTV allotment. In fact, in one case (KAJW, Tolleson, Arizona), the station’s DTV allocation will actually be improved by providing the station with a DTV channel within the proposed core spectrum and eliminating the current adjacent channel DTV allotment that would have raised interference and co-location concerns. In return, K19BN (San Diego, California), K52AO (Tucson, Arizona), and KCEC-LP

(Pueblo, Colorado) will be able to continue serving the Hispanic residents of their communities.

The requested changes to the Table of Allotments are as follows:

Tucson, Arizona (K52AO)

	<u>NTSC Channel</u>	<u>Sixth Report DTV Channel</u>	<u>Proposed DTV Channel</u>
KAJW, Tolleson, California	51	52	47

San Diego, California (K19BN)

	<u>NTSC Channel</u>	<u>Sixth Report DTV Channel</u>	<u>Proposed DTV Channel</u>
KUSI-TV, San Diego, California	51	18	43
KSWB-TV, San Diego, California	69	19	47

Pueblo, Colorado (KCEC-LP)

	<u>NTSC Channel</u>	<u>Sixth Report DTV Channel</u>	<u>Proposed DTV Channel</u>
KOAA-TV, Pueblo, Colorado	5	27	17

Univision requests that the Commission make these adjustments to the Table of Allotments and take any other steps possible to maintain Spanish-language LPTV service in communities across the nation.

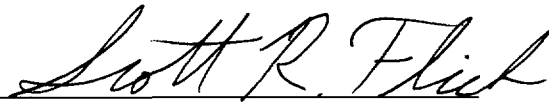
CONCLUSION

Providing broadcast service to the nation's large and growing Hispanic population is a challenging endeavor. Univision has overcome many obstacles to establish itself as the major source of news, public affairs, educational, and informational programming for U.S. Hispanics. The rules and procedures adopted by the Commission for implementing DTV will, however, have a disproportionately severe impact on Univision and other Spanish-language broadcasters, threatening the tremendous progress that has been made in serving the Hispanic community. By limiting the reach of their DTV facilities through forced co-location of their NTSC and DTV facilities as a result of adjacent channel DTV allotments, by displacing large numbers of their

LPTV stations serving Hispanic viewers, by failing to provide for adequate transmitter power and the receivers necessary to provide replication of existing levels of UHF service, and by effectively locking UHF broadcasters into their allotted DTV facilities with little hope of eventually eliminating competitive imbalances in facilities, the Commission has unintentionally delivered a significant blow to the Spanish-language broadcasters serving the Hispanic community. In an effort to minimize the impact of that blow, Univision urges the Commission to make the changes to the Table of Allotments requested herein with regard to the Dallas-Fort Worth, New York, Chicago, San Diego, Tucson, and Pueblo, Colorado television markets. Univision also urges the Commission to take the actions necessary to promote the survival of Spanish-language LPTV stations and to allow UHF broadcasters to be competitive in a DTV world.

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

By: 

Clifford M. Harrington

Scott R. Flick

C. Brooke Temple III

Its Attorneys

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006
(202) 659-3494

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